IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1500 OF 2002

Smt.Madhu V.Shetty & Anr. ...Petitioners.
Vs.
Shri R.A. Rajeeva & Ors. ...Respondents.

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Mrs. A. H. Cheda for the Petitioners.
Mrs.A. R. Joshi for Respondent Nos.1 and 2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

April 7, 2005.

P.C.:

On 10th April 1975, the Municipal Corporation accorded its sanction to the sale of Building Nos.3 and 4 and to a lease of Plot Nos.20 and 21 on which the aforesaid buildings are situated at Haji Ali to the Haji Ali Municipal Officers' Co-operative Housing Society Ltd. Accordingly, a communication was issued on behalf of the Municipal Corporation on 24th November 1975 recording the terms on which the leasehold interest was created and to govern the conditions for the sale of the two buildings. The Society was required to pay the cost of the two buildings and to admit such members as may be nominated by the Municipal Commissioner. The Society is also liable to pay ground rent to the Corporation. Under clause 9 of the letter of allotment, no member of the Society

was allowed to transfer the premises allotted to him without the previous written consent of the Municipal Commissioner and to any one except a nominee of the Commissioner.

Flat No.37 situated on the 6th Floor of Building No.4 was initially allotted by the Society to Mrs.Meher Minoo Panday together with the right, title or interest in five shares of the Co-operative Society. An agreement to sell was entered into by the Petitioners with the allottee on 6th December 1991, in pursuance of which full consideration was paid. An application was made to the Municipal Commissioner by the transferor on 16th December 1991 for permission to sell the flat to the Petitioners and a similar application was made by the First Petitioner on 17th March 1992. The Deputy Municipal Commissioner (Improvements) in a communication dated 29th June 1992 informed the Petitioners that the Municipal Corporation had no objection to the transfer of the premises in favour of the Petitioners. The flat has accordingly been transferred in the name of the Petitioners. Both the Petitioners, it may be noted, were Municipal employees. The First Petitioner retired as Law Officer of the Municipal Corporation in 1990, while the Second Petitioner resigned from service of the Municipal Corporation in 1965.

On 7th May 2001, the First Petitioner addressed a letter to the Municipal Commissioner and to the Municipal Corporation drawing attention to the fact that in breach of the governing conditions of allotment and the bye-laws, residential flats in the Co-operative Society were being transferred without the permission of the Municipal Commissioner unlawfully. The Petitioners are aggrieved by the action of the Municipal Corporation of 24th April 2002 by which the Assistant Engineer (Improvements) in the Estate Department has purported to re-enter Building Nos.3 and 4 with the help of the law enforcement machinery. A panchanama which was purported to have been drawn is annexed at Exh.G to the Petition. The Court has been informed that the action of the Corporation has been challenged by the Co-operative Society in Writ Petition 510 of 2003 which is pending before the Court and in which interim relief was granted.

The grievance of the Petitioners is that the order of re-entry is unlawful since it has been issued without furnishing the Petitioners an opportunity of being heard. Moreover, it was urged that the Petitioners have never been in breach of any condition governing the allotment since the transfer in favour of the

Petitioners was admittedly approved by the Municipal Commissioner. Hence, it was submitted that the right of the Petitioners as owners of the premises cannot be divested by an act of re-entry without authority of law.

Having heard Counsel appearing on behalf of the Petitioners and Counsel appearing on behalf of the Municipal Corporation, I am of the view that there is merit in the Petition and that the Petition is accordingly entitled to succeed. The Petitioners are allottees of a residential flat. The Petitioners have acquired the flat for valuable consideration and the transfer in favour of the Petitioners by the erstwhile owner has been duly approved by the Municipal Corporation in a communication dated 29th June 1992. The Petitioners have not been furnished with an opportunity of being heard before the Corporation resorted to the impugned action. That apart, there is not even an allegation that the Petitioners are guilty of any breach of the terms of allotment or the conditions subject to which permission to acquire the flat was granted. The Power of re-entry cannot be exercised arbitrarily and without the authority of law. The right of the Petitioners to occupation as lawful members of the Society cannot be disturbed, except in accordance with law and upon following procedure

known to law. (see in this context **Express Newspapers Pvt. Ltd. vs. Union of India,** AIR 1986 SC 872 at paras 86 and 87, PP 913-4 and **Bishan Das vs. State of Punjab**, AIR 1961 SC 1570).

The grievance of the Petitioners, it may be noted, is confined to the action of the Municipal Corporation in so far as it affects their rights. In these circumstances, the Petitioners are entitled to succeed. The Petition is made absolute in terms of prayer clause (a) by directing the First and Second Respondents to desist from enforcing the impugned order dated 24th April 2004 against the Petitioners in respect of their flat being Flat No.37 situated on the 6th Floor of Building No.4 of Haji Ali Municipal Officers' Co-operative Society Ltd., Haji Ali Park, Mumbai-400 006, without due process of law. There shall be no order as to costs.

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